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No. 161.

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Kehr for Appellees.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

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JOSEPH WHELESS *et al.*,
Appellants,
vs.
THE CITY OF ST. LOUIS *et al.*,
Appellees.
No. 161.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLEES.

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19022

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JOSEPH WHELESS *et al.*,
Appellants,
vs.
THE CITY OF ST. LOUIS *et al.*,
Appellees.
No. 161.

STATEMENT.

This is an appeal by complainants from a decree of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, dismissing for want of jurisdiction, their bill to enjoin the City of St. Louis and the President of its Board of Public Improvements from levying certain local assessments against the respective lots of land of the several complainants for the cost of improving a public street whereon said lots abut, and to enjoin the Gilsonite Roofing & Paving Co., from

demanding or receiving from the city any local assessment bills (or special tax bills, as they are known in Missouri), against the property of complainants.

The controversy arises upon the following state of facts:

On February 1, 1899, there was approved an ordinance of the City of St. Louis, theretofore duly enacted, known as Ordinance 19681, whereby the Board of Public Improvements of the City, which is charged with the performance of such duties, was directed to cause Whittier street, a public highway of the City, to be improved with a vitrified brick pavement from Washington boulevard to Finney avenue. In accordance with certain provisions of the City charter, the ordinance, in section 4 thereof, directed the President of the Board, upon the completion of the work, to compute the cost thereof, and thereupon to make an assessment as a special tax against each lot of ground fronting or bordering upon the improvement, for such proportion of the cost as the linear front feet of each such lot should bear to the total number of linear feet of the entire improvement. The President of the Board was directed by the same section to make out and certify to the City Comptroller, for the use of the contractor doing the work, bills of such assessments, as required by law; and under the St. Louis charter these bills, which constitute a lien against the various lots described therein, and are enforceable by suit in any court of competent jurisdiction, constitute the payment, and the only payment, to which the contractor is entitled.

The Board in due manner let the contract for the work in question to the defendant, the Gilsonite Roofing & Paving Co., and that Company, in compliance with the contract, duly executed the work. Thereupon the President of the Board of Public Improvements, in the discharge of his duty, computed the cost of the work,

and, as charged in the bill of complaint, was about to levy the same, by way of local assessments against the various lots abutting the improvement, when complainants, owners of a number of such lots, filed the bill in this case, for themselves and in behalf of all others who might be in like situation with them.

The bill charges substantially that the manner in which these assessments are made is violative of the Constitution of the United States, in that complainants are denied the due process of law, and that their private property is sought to be taken for public use without just compensation. In effect the purpose of the complainants is to attack the validity of the front foot rule of apportioning the cost of street improvements.

It is alleged in the bill that complainant, Thomas B. Chambers, is a non-resident of Missouri, and a citizen and resident of Ohio, and that the property of complainant, William R. Barnhart, will be imposed with an assessment in excess of two thousand dollars. It is not averred that the property of any other complainant will be affected to a similar extent.

It also appears in the bill that the aggregate amount of all of the assessments against all of the lots of land belonging to complainants and others, will be in excess of ten thousand dollars.

The bill was filed on October 3, 1899.

On October 7, 1899, defendants, The City of St. Louis and Robert E. McMath, President of the Board of Public Improvements, appeared and filed their joint plea to the jurisdiction of the court; their plea setting forth, among other reasons, why the court was without jurisdiction, the following:

"Second. That there is not any matter in dispute between the defendants, or any of them, and any one of the complainants in said bill, which matter exceeds, ex-

clusive of interest and costs, the sum or value of two thousand dollars."

"Fourth. These defendants specifically deny that the proportion of special assessment which is threatened to be levied against the abutting lots of one of the complainants, to wit, William R. Barnhart, is in excess of two thousand dollars, as set forth in said bill of complaint; and these defendants respectfully show unto your Honor that the allegation concerning the amount of assessment against the lot of complainant, Barnhart, is the only allegation in said bill of complaint showing, or tending to show, that the amount in dispute between any one of the complainants and the defendants exceeds the sum of two thousand dollars; and these defendants allege the facts to be that the assessments which would be levied upon the lots belonging to the said complainant, Barnhart, by reason of the improvement of Whittier street, set forth in the bill of complaint, in the aggregate amount to far less than the sum of two thousand dollars, and do not and will not exceed the sum of fourteen hundred dollars."

"Fifth. It appears upon the face of the bill of complaint that the several complainants are and will be charged separately with the amounts to be assessed against them for the improvement of Whittier street. Therefore the amounts assessed against the several complainants cannot be added together in order to give the court jurisdiction. Since the matters in dispute are separate and distinct, and no one exceeds in value the sum of two thousand dollars, they cannot be joined in one suit for convenience or economy, or for any other reason, so as to give this court jurisdiction."

This plea was supported by affidavit filed with it, from which affidavit, it being that of the Street Commissioner of the City of St. Louis, it appears that the two lots of complainant William R. Barnhart, would be as-

sessed respectively in the amounts of six hundred dollars and seven hundred and eighty dollars, making an aggregate against both lots of thirteen hundred and eighty dollars; and further, that no property of any one complainant to the bill would be assessed in an amount equal to fourteen hundred dollars.

On October 11, 1899, complainants filed their demurrer to the plea to the jurisdiction, assigning in their demurrer that the facts set out in the plea are not inconsistent with the jurisdiction of the court, and do not constitute a sufficient plea to its jurisdiction. This demurrer was argued and overruled.

On October 26, 1899, the parties again appeared, by their respective solicitors, and complainants declined to plead further. *They expressly admitted the truth of the averments contained in the plea to the jurisdiction*, and thereupon, on such admission and refusal to plead over, the court entered a decree sustaining the plea to the jurisdiction and dismissing the bill. (See printed transcript, page 16.)

Thereafter assignments of error were duly filed by complainants, and they were allowed an appeal to this court. The certificate as to the jurisdictional question is to be found on page 19 of the printed transcript.

The only question, therefore, which is presented to this court, is whether the lower court possessed jurisdiction of the cause; and this depends on whether the separate assessments against the separate lots of land of the various complainants could properly be added together for the purpose of conferring such jurisdiction, or whether each was bound to stand or fall by itself.

BRIEF.

I.

The mere fact that a question is involved, arising under the constitution or laws of the United States, is not sufficient to give jurisdiction to a Circuit Court of the United States; the matter in dispute must also involve an amount exceeding two thousand dollars, exclusive of interest and costs.

Act of August 13, 1888 (Stat. at L. 433, Ch. 866);
Holt v. Indiana Manufacturing Co., 176 U. S. 68;
United States v. Sayward, 160 U. S. 493.

II.

Nor will the mere fact of diverse citizenship of one complainant confer such jurisdiction.

Hooe v. Jamieson, 166 U. S. 395, and cases cited.

III.

Under the charter of St. Louis and Ordinance 19681, authorizing and directing the improvement in question, the cost thereof was required to be imposed against the several lots of ground adjoining the improvement, and deemed to be benefited thereby, in the proportion that the frontage of each lot might bear to the total frontage of the work. This, as construed by the Missouri courts of last resort, means *a separate and distinct assessment against each lot.*

Fowler v. St. Joseph, 37 Mo. 228;
St. Louis v. Clemens, 49 Mo. 532;
Kemper v. King, 11 Mo. App. 116.

And even though contiguous lots belong to one owner, they must be separately assessed and not included in one bill or certificate.

Miller v. Anheuser, 4 Mo. App. 436.

And a local assessment, or a special tax bill (as it is called in Missouri), embracing a charge against two contiguous lots, is void, though the title to both be in the same person.

Kemper v. King, *supra*.

Therefore, since the various lots of land liable for the assessments in this case are owned in severalty, and no one complainant is interested jointly or in common in the lot of any other, and no one complainant is concerned in or can be affected by an assessment or lien against any lot but his own; and since it was confessed by complainants that the assessment against no one lot would amount to two thousand dollars, the court below was without jurisdiction, and properly so ruled; for, while it is well settled that where a number of complainants join, who claim under the same title, and have a common interest, the test of jurisdiction will be the aggregate of their interests (Gibson v. Shufeldt, 122 U. S. 27; Market Co. v. Hoffman, 101 U. S. 112), yet it is equally well settled that where the interests are distinct and they are joined for convenience only, and because they form a class of parties whose rights or liabilities arise out of the same transaction, or because they have some relation to a common fund or mass of property sought to be administered, the distinct demands or liabilities cannot be united for the purpose of giving jurisdiction, but each must stand or fall by itself alone.

Oliver v. Alexander, 4 Pet. 143;
Rich v. Lambert, 12 How. 352;
Seaver v. Bigelow, 5 Wall. 208;

Russell v. Stansell, 15 Otto (105 U. S.) 303;
Gibson v. Shufeldt, 122 U. S. 27;
Clay v. Field, 138 U. S. 464;
Davis v. Schwartz, 155 U. S. 631;
Colvin v. Jacksonville, 158 U. S. 456;
Fishback v. Western Union Telegraph Co., 161 U. S. 96;
Cannon v. Citizens Bank, 164 U. S. 319;
Ogden City v. Armstrong, 168 U. S. 224;
Sioux Falls National Bank v. Swenson, 48 Fed. 621;
Holt v. Bergevin, 60 Fed. 1;
Putney v. Whitmire, 66 Fed. 385;
Busey v. Smith, 67 Fed. 13;
Smithson v. Hubbell, 81 Fed. 593.

"The *distinct and separate interests* of claimants *in a suit for relief against assessments* cannot be united for the purpose of making up the amount necessary to give this court jurisdiction on appeal."

Ogden City v. Armstrong, *supra* (168 U. S. 224), *directly in point.*

"While the appellants were permitted, for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, their object was *to relieve each separate owner* from the amount for which he personally, or his property, was found to be accountable. An injunction, if granted, would necessarily be to prevent the appellee from collecting *from each owner* the amount for which he was *separately* liable. It is clear under the rulings that * * * such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction."

Russell v. Stansell, 15 Otto (105 U. S.) 303.

ARGUMENT.

The controversy between counsel in this case is not so much over the law as over the question of its proper application to the particular facts of this case.

For appellees it is readily conceded that where a number of complainants, all claiming under the same title, and all having a common interest in the relief sought, join in one bill, the matter in dispute consists of their united interests.

In *Clay v. Field*, 138 U. S. 464, a general statement of the rule was made in an opinion prepared by Mr. Justice Bradley, in these words:

"The general principle observed in all cases is that if several persons be joined in a suit in equity or admiralty, *and have a common and undivided interest*, though separable as between themselves, the amount of their *joint* claim or liability will be the test of jurisdiction; but where their interests are *distinct* and they are joined for the sake of *convenience only*, and because they form a class of parties whose rights or liabilities arose out of the same transaction or have relation to a common fund or mass of property sought to be administered, such *distinct* demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, and each must stand or fall by itself alone."

Counsel for complainants have collected, and in their brief have discussed many of the cases of this court in which it was held that the test of jurisdiction was the total or aggregate amount of the interests of the various complainants. Nevertheless, in each of these cases the court very distinctly declared that such a test would not be applied where the rights or interests were independent and separate, and where the union or joinder of complainants was merely for the sake of convenience, to

avoid multiplicity of suits, or to save costs; and that cases of that nature would fall within the classification where the test is not the aggregate amount of all the claims, but where jurisdiction will only result if the pecuniary amount of the individual claim equals or exceeds the amount fixed by the judiciary acts.

Without undertaking to review the cases cited and brought forward by complainants in detail, it may fairly be said that they fall within one or the other of several groups illustrating the general rule of a *common and undivided* title or interest; for example, a bill to foreclose a mortgage, as was the case in *New Orleans Pacific Ry. Co. v. Parker,* 143 U. S. 42, where the bill was filed by one bondholder for himself and all other bondholders, and where, moreover, the mortgage contained an express provision that any bondholder might so proceed in lieu of the trustee; the question in such case being *the right to foreclose the mortgage,* independent of the amount due any particular complainant; proceedings to enforce a judgment or money decree, although the same may be in favor of several, each of whom on division among themselves would be interested in an amount less than that required for jurisdictional purposes, the matter in controversy in such case being *the single and common judgment* (*Shields v. Thomas,* 17 How. 3); or on a *question of priority,* as between judgment creditors, based on mechanic's liens, and the beneficiaries in a deed of trust covering the property affected by the liens, although none of the beneficiaries might be interested to an amount equalling five thousand dollars, the question in such case being not the amount due, but whether the instrument, *as one instrument,* should be held superior to the liens (*Freeman v. Dawson,* 110 U. S. 264); or where a number of salvors filed a single claim *for a single salvage service,* the controversy there being whether the service was rendered, and its value, and not how

that value was to be shared among the salvors (*The Connemara,* 13 Otto 754); in the case of a will contest where the question is *will or no will,* and where the jurisdiction of course is determined by the amount of the estate which would pass by the will if valid, or by the intestacy laws if invalid, and not by the amount which would pass to any one of the beneficiaries under the will, or the next of kin under the law (*Overby v. Gordon,* 177 U. S. 214); suits to enforce the liability of stockholders for unpaid stock subscriptions amounting in the aggregate to more than the jurisdictional amount, the controversy being *the liability* and not the amount due by any particular stockholder (*Handley v. Stutz,* 137 U. S. 366).

Without stopping, we repeat, to consider each single case cited by complainants, the foregoing may be taken as illustrating the proposition announced and the rule laid down in all of them. But the cases are equally clear, and the rule is equally well settled, that where the matter in controversy is not one in which the parties complainant have a *united or undivided* interest, there jurisdiction will result only in favor of or against those as between whom the controversy exceeds the jurisdictional amount, and that the several interests cannot be added together for that purpose.

This rule, we have said, is recognized in the very cases cited by complainants. For example, in the leading case of *Shields v. Thomas,* 17 How. 3, the representatives of a deceased person brought suit to enforce a decree in excess of the amount necessary to give this court jurisdiction on appeal, against one charged with a conversion of a part of the estate. The court held that the matter in controversy or the amount in dispute was not the proportion which might be due the several complainants on a division of the estate, but *the amount of the decree* sought to be enforced. The court nevertheless

recognized the rule for which we contend, and distinguished the case before it from *Oliver v. Alexander,* 4 Pet. 143, where a crew of seamen, for the sake of convenience and to save costs, were allowed to join in a suit for wages, and where it was said that the right of each seaman was separate and distinct from his associates; and from the case of *Rich v. Lambert,* 12 How. 352, where several shippers who owned goods which had been damaged, but who had no common interest in the goods, were allowed to join on the same theory, for convenience, but where it was also held that the interests of each were separate and distinct, and that jurisdiction on appeal could not obtain by uniting their several demands.

That the same test applies in determining whether the Circuit Court of the United States has original jurisdiction, as is applied in determining whether this court has jurisdiction on appeal, is settled by *Walter v. Railroad Co.,* 147 U. S. 373, where it was said:

"It is well settled in this court that when two or more complainants having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal to this court, as to those whose claims exceed the jurisdictional amount."

On the other hand, there are many cases of this court in which the rule has been applied to particular facts, that separate and distinct claims or interests cannot be aggregated in order to give jurisdiction, and to some of these we briefly refer.

Davis v. Schwartz, 155 U. S. 631, was a suit to set aside as in fraud of creditors, several mortgages to different persons, the validity of each mortgage depending upon considerations of its own; it was held in that case that the jurisdiction of this court on appeal depended on the amount involved in each mortgage, and not on the

aggregate of the several mortgages involved in the litigation.

In *Colvin v. Jacksonville*, 158 U. S. 456, the complainant sought to enjoin the City of Jacksonville, Florida, from issuing certain municipal bonds, amounting together to one million dollars. His bill averred that as the owner of property in the city he would, by reason of such bond issue, be assessed with taxes exceeding two thousand dollars. This latter allegation was denied by the answer, and the court, upon hearing, found that, as a matter of fact, complainant would not be assessed in an amount equalling two thousand dollars, and dismissed the bill. Thereupon he appealed, and the action of the lower court was affirmed by this court, which ruled that "the amount of the interest of the complainant, *and not the entire issue of the bonds*, was the amount in controversy."

Cannon v. Citizens Bank, 164 U. S. 319, was a case where the bank sought to enjoin the collection of taxes by the sheriffs of several parishes in Louisiana, from which taxes the bank claimed to be exempt by virtue of its charter of incorporation. It was *held* that the amount of the taxes so sought to be affected could not be added together to give jurisdiction.

To the same effect is the case of

Fishback v. Western Union Telegraph Co., 161 U. S. 96.

The case of *Russell v. Stansell*, 15 Otto (105 U. S.) 303, decided March 13, 1882, opinion by Mr. Chief Justice Waite, is directly in point, and of itself is decisive authority for the action of the Circuit Court in this case.

From the opinion in that case it appears that Stansell, who was the appellee, obtained a decree against a Levee Board of Mississippi for the payment to him of upwards of $70,000.00. This decree remaining unsatisfied, Stan-

sell instituted summary proceedings in the United States Circuit Court for the Northern District of Mississippi, under the terms and provisions of the statutes creating the board, to obtain an assessment against the lands in the district for the payment of his decree. In that proceeding, an order was made by the court, resulting in an assessment by commissioners appointed for that purpose; and the order provided that any person feeling aggrieved at the action of the commissioners might, by petition, present his grievance to the court for such redress as he might be entitled to. Under this order Russell and others, as individuals and as members of an executive committee, appointed at a mass-meeting of the owners of the lands in the district charged with the payment of the assessment, applied for an injunction against the collection thereof, claiming that the proceedings were illegal. It appears that none of the petitioners could in any event be made liable under the assessment for an amount exceeding twenty-five hundred dollars. But on the contrary, they were each assessed by reason of their ownership of lands in an amount far below that stated.

A preliminary injunction was granted on presentation of the petition, but on final hearing the same was dissolved and the proceeding was dismissed. Thereupon an appeal was taken to this court, which appellee, Stansell, moved to dismiss on the ground that the amount in dispute between him and any one of the several persons charged with the assessment was less than five thousand dollars.

We thus have presented substantially the question which is presented in the case at bar, where the aggregate of the assessments against the lands of the several complainants is in excess of the amount which was necessary to give the lower court jurisdiction, but the assessment against the land of any one complainant was

far below it. The motion to dismiss the appeal was granted in an opinion so concise and brief, and yet so thoroughly covering the proposition involved, that we cannot refrain from stating it in full.

"*This motion is granted.* While the appellants, and those whom they have been chosen to represent, are all interested in the question on which their liability to the appellee depends, they are *separately* charged with the *several amounts assessed against them.* There is no *joint* responsibility resting on them *as a body.* The proceeding on the part of the appellee was to require each of the several land owners in the levee district to pay his separate share of the debt that had been established against the district. *The recovery was against each owner separately.* While the appellants were permitted, for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, *their object was to relieve each separate owner from the amount from which he personally, or his property, was found to be accountable.* An injunction, if granted, would necessarily be to prevent the appellee from collecting *from each owner* the amount for which he was *separately liable.* It is clear that under the rulings in *Paving Co. v. Mulford*, 100 U. S. 148; *Seaver v. Bigelow*, 5 Wall. 208; *Rich v. Lambert*, 12 How. 347; *Stratton v. Jarvis*, 8 Pet. 4, and *Oliver v. Alexander*, 6 Pet. 143, such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction on appeal. Although the amount due the appellee from the levee district exceeds $5,000, *his claim on the several owners of property is only for the sum assessed against them respectively.* Any owner can relieve himself and his property from all further liability for the district by paying his part of the assessment."

In the subsequent case of *Gibson v. Shufeldt*, 122 U. S. 27, decided May 23, 1887, opinion by Mr. Justice Gray, all of the intermediate and the previous cases bearing on the rule, are carefully collected and classified for the reason stated in the opening sentence of the opinion, where it is said:

"The question presented by this motion can hardly be considered an open one; but the subject has been so often misunderstood that the court has thought it convenient to review the former decisions and the grounds on which they rest."

All of the antecedent cases are then marshalled in review, discussed and classified, thus bringing the work down to the year 1887, and reiterating and re-affirming the doctrine of *Russell v. Stansell.*

To attempt, in view of this opinion, to discuss the cases which are thus referred to, would be a work of supererogation and of no profit to counsel or the court. The reasoning of that case clearly assigns the case at bar to that classification of cases wherein the claims of the several parties cannot be united or aggregated for the purpose of conferring jurisdiction.

Probably the last expression of opinion by this court, in a case which may be said to be on all fours, and certainly directly in point, was made in the case of *Ogden City v. Armstrong*, 168 U. S. 224, opinion by Mr. Justice Shiras. In that case a number of property owners filed a bill against the City of Ogden, its Mayor and the members of its common council, to restrain the City and said officers from levying assessments upon the real property of the complainants, and all others similarly situated, for the cost of paving a portion of one of the streets of the city. The prayer of the bill was like the prayer of the bill here, for a decree declaring the ordinance under which the assessments were made, and the assessments, void, and to restrain defendants from pro-

ceeding thereunder. From a decree in favor of the complainants an appeal was taken by the City to the Supreme Court of the Territory, and on affirmance of the decree there, an appeal was taken and allowed to this court.

From the findings of facts, which are preserved in the opinion, the close similarity between that case and the case at bar are manifest. It appears that the property of no complainant would have been liable to be affected to an amount equal to $2,000, except the property of the Realty Company of Kittery, a Maine corporation, and one of the complainants in the case, whose property, under the ordinance complained of in the bill, was liable to be affected to an amount in excess of $7,000.00. No motion was made to dismiss the appeal, but it appears that upon the oral argument the suggestion was made that the court had no jurisdiction; thereupon the court, before passing to the merits of the controversy, considered that question first; and in so doing clearly and distinctly concluded that, "*the distinct and separate interests of claimants in a suit for relief against assessments cannot be united for the purpose of making up the amount necessary to give this court jurisdiction on appeal;*" but concludes that inasmuch as the Realty Company could have appealed from a decree adverse to it, that the defendant city might also appeal, because the matter in dispute between said complainant and defendants exceeded $5,000.00. That part of the opinion which relates to the question now before the court, is as follows:

"The first question to be determined is whether the amount in controversy is sufficient to give us jurisdiction of the appeal.

"Although no motion was made to dismiss the appeal, it was suggested at the argument that as it was not competent to make up the sum necessary to give this court

jurisdiction by uniting the several sums for which each taxpayer was liable, this was such a case, and that therefore we should dismiss the appeal.

"Undoubtedly, it is the well settled rule of this court that, in a suit in equity brought in the Circuit Court by two or more persons on several and distinct demands, the defendant can appeal to this court as to those plaintiffs only to each of whom more than $5,000 is decreed. *Russell v. Stansell,* 105 U. S. 303, was a case in its facts much like the present one. There land within a particular district was assessed for taxation, each owner being liable only for the amount wherewith he was separately charged; a bill of complaint was filed by a number of them, praying for an injunction against the collection of the assessment, and from a decree dismissing the bill an appeal was taken to this court. It was held that, while the complainants were permitted, for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, the object was to relieve each separate owner from the amount for which he personally, or his property, was found to be accountable, and that such distinct and separate interests could not be united for the purpose of making up the amount necessary to give this court jurisdiction on appeal.

"The same conclusion was reached in *Gibson v. Shufeldt,* 122 U. S. 27, where the previous cases were fully discussed.

"An examination of this record discloses that none of the complainants, save one, was assessed with an amount sufficient to have enabled him to bring the case here on appeal, and accordingly, under the doctrine of the cases cited, this appeal must be dismissed as to such parties.

"But it appears that the Realty Company of Kittery, a corporation of the State of Maine, a party complainant in the supplemental bill, had been assessed, under

the ordinance complained of, for the sum of $748.80 as an installment for one year, and had been compelled to pay the same, and that the City was threatening to continue said proceedings and to sell the real estate of said company annually for nine years, as each installment for a like sum became due. The liability of that company then, under the ordinance and assessment complained of, amounted to the sum of $7,488.00, and as that company could, had the decree of the court below been adverse to it, have brought the case here on appeal, so, upon the authorities above referred to, it is competent for the defendant City to do the same."

The Circuit Courts in the various districts have made a similar application of the rule announced by this court, and as indicating how they have understood its decisions, we refer also very briefly to a few of them as bearing upon this case.

The case of *Sioux Falls National Bank v. Swenson*, 48 Fed. 621, comes very close to the case at bar. In that case a bill was filed by the bank in its own behalf, and in behalf of its stockholders, for the purpose of enjoining the collection of certain taxes assessed against the bank and its shareholders for State, county and city purposes, the defendants being the County of Minnehaha, the City of Sioux Falls and the County Treasurer. In the bill it was claimed that the taxation was an attempted double taxation, and also that the assessment was illegal and void. The defendants contended that the court was without jurisdiction because it was not averred in the bill that the bank had in its possession or under its control any *undivided fund* in excess of $2,000, belonging to the stockholders, and which fund could be made liable for the payment of the taxes assessed against it and the shareholders; and that, therefore, there was "no claim asserted against the bank, or in which it may be said to be interested as trustee or otherwise, other or

different from the several claims based upon the taxes assessed against the bank in the name of its president and against the shareholders individually." It also appeared that no single assessment, whether against the bank or against the shareholders, amounted to as much as $2,000. Therefore, to reach that sum and to give jurisdiction, it would have been necessary to add the assessments against two or more of the parties together.

Many of the cases decided by this court, and to which reference has been herein made, are cited, and the following conclusion is then reached by Judge Shiras:

"The rule deducible from these authorities is, that jurisdiction is not conferred because a number of persons are interested in a given question, and the aggregate of the several claims may exceed the amount requisite for jurisdiction. The 'matter in dispute,' within the meaning of the statute, *is not the principle or rule of decision which is involved in the controversy, and which may be common to the interests of all the parties to the litigation, but it is the money value which is at stake;* and the claims of the several parties *cannot be added together* to form the matter in dispute, unless each party has an *undivided interest* in a claim to the property that is the subject of the litigation.

"In the case now before the court the bank and its shareholders are all interested in the questions involved in the legal proposition touching the validity or invalidity of the mode of assessment pursued, but the money interest they have in the litigation is separate and distinct. The tax assessed against the bank is separate and distinct from that assessed against the shareholders; and the tax assessed against one shareholder cannot be collected from another. If the tax collector should undertake to enforce the payment of the taxes complained of, he would proceed *against the property of each shareholder separ-*

ately, for the tax due from him alone. The bank and each of the shareholders could have commenced a separate action to restrain the collection of the tax assessed against each one, and in such case neither of the complainants would have had any money interest in the cases brought on behalf of the other shareholders. As the case now stands, the bank and its shareholders are interested alike *in the legal propositions* arising on the record, but there is *no common or undivided interest in any property,* nor in any fund, *nor in a tax assessed in a lump against property owned in common.* The assessment and tax is against each one *separately,* and the money interest each one has in the litigation is measured by the amount of the tax assessed against him individually. That is the extent of the money interest each one has in the suit, and the case, therefore, is one wherein, for convenience sake, and to save cost and expense, one suit may be brought to settle the rights of all; but the money claims involved are separate and distinct, and the amount thereof cannot be added together for the purpose of conferring jurisdiction upon this court. It is clear from the record that, had separate suits been brought by each shareholder for the purpose of cancelling the assessment complained of, none of them could have been maintained in this court, because none would have involved a sum exceeding $2,000; and, under the authorities cited, it is equally clear that, while the joinder of separate and distinct claims or rights of action may be permitted under proper circumstances, for convenience sake, and to prevent a multiplicity of suits, and to escape unnecessary costs, it is not permitted to add together the several and distinct money interests belonging to the litigants, in order to create a jurisdiction which does not otherwise exist. As it appears from the face of the record that none of the distinct and several amounts of taxes assessed against the bank and its

shareholders exceeds $2,000, it is clear that the controversy does not embrace a matter in dispute exceeding that sum which, under the statute, is a requisite to the jurisdiction; and, being without jurisdiction, all that the court can do is to dismiss the bill for that reason."

Holt v. Bergevin, 60 Fed. 1, was a case where two parties having claims for labor performed for the same employer, joined their claims in a single suit to enforce a lien therefor, by virtue of the law of Idaho, which allows any number of parties to join in the same action where they claim liens against the same property. The claims arose, however, under separate contracts of employment and were supported by separate evidence. On the petition of defendants the cause, which was begun in the State Court, was removed to the Federal Circuit Court. There the complainants moved that the case be remanded on the ground that as neither claim amounted to $2,000, though the aggregate of the two exceeded that amount, the United States Circuit Court had no jurisdiction. This motion was sustained in a well-reasoned opinion by Beatty, District Judge, reviewing the authorities of this court; the conclusion being reached that, "while all the complainants asked a lien for the security of their several claims against the same property of the defendants, they have no *joint* interest therein." The opinion further declares that notwithstanding all of the findings or judgments may be framed into a single document, yet "for each there must be the equivalent of a separate judgment."

In *Putney v. Whitmire*, 66 Fed. 385, the authorities are also carefully reviewed and the conclusion there reached that a bill cannot be maintained which is filed by several creditors against the same debtor, to set aside certain mortgages on a stock of goods of which he is still in possession, it appearing that the claim of no creditor exceeded $2,000, and that none had been re-

duced to judgment. The Circuit Court ruled that the case fell within that classification of cases that several and distinct claims cannot be united in order to confer jurisdiction.

In the case of *Busey v. Smith*, 67 Fed. 13, the question arose in the Circuit Court of the District of Indiana under these facts: Mary E. Busey, being a creditor of the estate of William Smith, deceased, filed a bill in the Circuit Court to subject to the payment of her claim the interest of the several defendants in the estate of the deceased, by virtue of a statute of Indiana, which provides that the heirs, devisees and distributees of a decedent shall be liable to the extent of the property received by them from such decedent's estate, to any creditor whose claim remains unpaid. The defendants moved to dismiss the cause for want of jurisdiction, and they placed their motion on the ground that it appeared on the face of the bill that the liability of no single defendant equalled $2,000. This motion to dismiss was sustained by Baker, District Judge, such action being based on the authorities, heretofore referred to, of this court. In reaching this conclusion, the Judge says:

"It is insisted that because a suit may be brought jointly against all the heirs that the complainant may recover a joint and several judgment against all the defendants; and as the aggregate amount recoverable from them exceeds $2,000, the present bill is within the jurisdiction of the court. This contention seems to be unfounded. It is necessary to join all the heirs in order to obtain a decree fixing the several liability of each, but this does not vary or enlarge the extent of their several liability. The obligation of each still remains several and not joint. * * * Clearly each of the heirs in this case is not liable for the whole debt, and therefore their liability cannot be joined, in whatever form the suit may be brought. The complainant in her prayer

for relief expressly recognizes that her cause of action against each is several, for she asks that each be decreed to pay the amount received by him. It is settled that neither co-defendants nor co-complainants can unite their separate and distinct liabilities for the purpose of making up the amount necessary to give this court jurisdiction. * * * And as the liability of each is less than $2,000, it follows that the court is without jurisdiction."

In *Smithson v. Hubbell,* 81 Fed. 593, the facts were these: The Kittitas Valley National Bank was placed in the hands of a receiver appointed by the Comptroller of the Currency, as an insolvent banking institution. Complainant Smithson had proved up and established his claim against said insolvent institution for the amount of $1,764.05, no part of which was paid. The Oregon National Bank also established a claim against the assets of the insolvent institution, and afterwards passed into the hands of a receiver. A dividend was declared and ordered paid, and the purpose of the proceeding by Smithson was to enjoin the payment of the dividend to the receiver of the Oregon National Bank, on the ground that its claim was fraudulent as to other creditors. The bill, which purported to be filed for the complainants and all others, averred that there were other creditors having claims against the insolvent amounting to over $20,000, exclusive of the claim charged to be fraudulent. The defendants disputed the jurisdiction of the court to entertain the bill, on the ground that the amount in dispute was less than $2,000. The complainant contended that inasmuch as the bill was being prosecuted not only for himself, but for others having claims amounting in the aggregate to more than $2,000, jurisdiction obtained. The court, however, declined to entertain jurisdiction and dismissed the bill, saying:

"I am constrained, however, by the decisions of the Supreme Court of the United States, to hold that the amount of indebtedness to the complainant, which is less than $2,000, must be taken as the amount involved, for the purpose of determining the question of jurisdiction. In suing as a representative of a class of persons similarly situated, and having similar rights, the complainant *brings into the cause only the question to be determined;* and he is not to be considered as bringing into the case the separate claims and demands of other creditors. The law does not confer upon him the authority of an agent of other creditors for that purpose, nor authorize him to augment his own distinct claim for the purpose of making a claim within the jurisdiction of the United States Circuit Court. The rule in such cases laid down by the Supreme Court of the United States in the case of *Clay v. Field*, 138 U. S. 464-483, 11 Sup. Ct. 419, 425, is as follows:

" 'The general principle observed in all is that if several persons be joined in a suit in equity or admiralty, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction; but where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, but each must stand or fall by itself alone.'

"In that case the question was as to the jurisdiction of the Supreme Court, but the same principle governs in cases where the jurisdiction depends upon the amount in controversy, whether the question is as to the jurisdiction of the Supreme Court, or of a Circuit Court.

This is made clear by the opinion of Mr. Justice Brown, in the case of *Walter v. Railroad Co.*, 147 U. S. 370-374, 13 Sup. Ct. 349. The following excerpt bears directly upon the point: 'It is well settled in this court that when two or more plaintiffs, having several interests, unite, for the convenience of litigation, in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal in this court, as to those whose claims exceeded the jurisdictional amount; and that, when two or more defendants are sued by the same plaintiff in one suit, the test of jurisdiction is the joint or several character of the liability to the plaintiff. This was the distinct ruling of this court in *Seaver v. Bigelow*, 5 Wall, 208; *Russell v. Stansell*, 105 U. S. 303; *Trust Co. v. Waterman*, 106 U. S. 265, 1 Sup. Ct. 131; *Hawley v. Fairbanks*, 108 U. S. 543, 2 Sup. Ct. 846; *Stewart v. Dunham*, 115 U. S. 61, 5 Sup. Ct. 1163; *Gibson v. Shufeldt*, 122 U. S. 27, 7 Sup. Ct. 1066; *Clay v. Field*, 138 U. S. 464, 11 Sup. Ct. 419.'

"The application for an injunction will be denied and the case dismissed, for the reason that the case is not within the jurisdiction of this court."

These cases sufficiently demonstrate the law upon the subject and illustrate its application to various states of fact.

The question then is, within which classification does the case at bar fall? Is it a case where the claims of the several complainants may be united together so as to give jurisdiction, or is it a case where jurisdiction will only obtain provided some one of the claims exceeds two thousand dollars?

It is first to be remembered that this is a case of local assessments or special taxation, and that, therefore, no aid is furnished by a reference to cases bearing upon the exercise of general taxation. Where a complaint is filed by a taxpay-

ing citizen to restrain an assessment of general taxes, or where a tax-paying citizen files complaint to enjoin the illegal disbursement of public funds, it may be said that he appears in a representative capacity on behalf of the general public, and that, therefore, jurisdiction is not to be measured by his own individual interest in the matter. He comes forward as the champion of the community, of the public in general. Again, an assessment of general taxes is a single act; there is but one assessment, and in an action to enjoin it it is immaterial how that general assessment may affect the particular individual or his particular property.

But local assessments stand on a different footing. While the power to make local assessments for local improvements is referable to the taxing power of the State, a distinction is everywhere made between special taxation and taxes generally. The latter is an exercise of sovereignty. General taxes are demanded by government in its sovereign capacity. Special taxes are laid upon real property as a compensation for some public improvement which specially benefits that property beyond the benefits in general to property throughout the municipality or the community, and are an equivalent paid by the property benefited for its enhancement in value.

Thus it is said in *Elliott on Roads and Streets*, page 370, that:

"A distinction is made between local assessments and taxes levied for general revenue purposes. The question has been before the courts time and time again, and the almost unruffled current of judicial opinion is that an assessment for a local improvement is not a tax within the meaning of the constitutional provisions requiring uniformity of taxation. Local assessments are not ordinary taxes levied for the purpose of sustaining the government, but they are charges laid upon individual

property because the property upon which the burden is imposed receives a special benefit which is different from the general one which the owner enjoys in common with others as a citizen of the commonwealth."

And so it is generally held that an exemption from taxation does not include an exemption from local assessment. *Dillon's Municipal Corporations,* Section 777; *Welty on Assessments,* Section 170.

And so it has been declared in Missouri that constitutional or statutory provisions exempting property from taxation do not apply to or include special local assessments. *Sheehan v. Good Samaritan Hospital,* 50 Mo. 155; *Farrar v. St. Louis,* 80 Mo. 379; *City of Clinton v. Henry County,* 115 Mo. 557.

Now while the bill of complaint in this case does not so charge, the impression is sought to be left that the assessment for the cost of improving Whittier street, in question, was made as one entire assessment, to be subsequently subdivided and apportioned against the various lots of land bordering upon the street. The fact is, however, and that fact sufficiently appears upon even a casual reading of the bill, that no lump assessment is or can be made under the provisions of the charter of the City of St. Louis, or the terms of the ordinance under which the work of improvement was done. Upon the completion of the work the President of the Board of Public Improvements is directed to compute the cost of the work, and, having ascertained the cost, is thereupon required to make *a separate and distinct assessment against each separate lot of land,* for that much of the cost ascertained as the front feet of the lot bear to the total number of front feet of the improvement.

That such is the duty of the President of the Board is not only plain from the language of the charter and the ordinance, but such is his duty under the decisions of the Missouri courts, which hold that under the charter,

and under these improvement ordinances, the assessment is a *separate assessment* against each lot. *Fowler v. St. Joseph,* 37 Mo. 228; *St. Louis v. Clemens,* 49 Mo. 532; *Kemper v. King,* 11 Mo. App. 116.

And even though contiguous lots may belong to the same owner they must be separately assessed, and must not be included in one bill or certificate. *Miller v. Anheuser,* 4 Mo. App. 436.

And it has been held that where a local assessment or a special tax bill embraces a charge against two adjoining lots, it is absolutely void, though the title to both lots be in the same person. *Kemper v. King, supra.*

It is therefore somewhat misleading to suggest to this court that the assessment for street construction under the St. Louis charter is a single act, and that all the owners of property chargeable with the cost of the improvement are *jointly* interested therein. The fact is that there are as many assessments made, and required to be made, as there are lots of land abutting the improvement.

It is not pretended that the complainants in this case have any joint title, or title in common, to any of the lots affected by these assessments. They are owners in severalty. None is interested in the lot owned by any of the others. A lien against the lot of complainant Wheless cannot concern or affect complainant Barnhart. A sale under assessment of the property of complainant Hill could work no injury to complainant Burnett. In other words, the interests and the rights of complainants are entirely independent and distinct and apart from each other. It is true that all are interested in the question or questions of law which are involved, and in the outcome of the litigation; but this, of course, was true in every other case in which the court has held that there could be no aggregation of interests in order to give jurisdiction. Such interest, however, is not the

common, the joint, the undivided interest, in the matter in dispute, which the law requires in order to permit the casting together of interests in order to give jurisdiction. Each complainant has an interest in the legal propositions, but that is merely collateral, or indirect. Those who have not come forward and joined in the bill have the same interest of that kind as those who have joined, and yet it would never be claimed that if the aggregated amount of the interests of those who are parties to the bill did not equal two thousand dollars, that the matter could be mended by adding thereto the pecuniary interest of those who did not chose to come in.

Another test, suggested in some of the opinions to which reference has been made, is whether the complainants were bound to unite in the bill, or whether it was merely permissible to them to unite. In other words, were they necessary parties or merely proper parties. Where a claim is joint all the owners thereof must unite in an action to enforce it or to protect it. Every party interested is a necessary party. In the case at bar it is obvious that the complainants joined merely for convenience and to save costs. It was perfectly competent for them to do so, because it is well established that in an equity proceeding of this nature parties may join for convenience and in order to avoid a multiplicity of suits, but such joinder was not compulsory here. The question at issue could as well have been raised by bill filed by any one complainant alone as well as by bill filed by all together.

From the fact that pains were taken to have the bill aver that the assessment against the lots of complainant Barnhart would exceed the sum of two thousand dollars —an averment which, although verified by affidavit to the bill, was admitted in open court to be unfounded in fact—it would seem that counsel for complainants were of the impression, when first entering upon this litiga-

tion, that the assessments against the various lots could not be united for the purpose of conferring jurisdiction upon the Circuit Court, and that it was necessary to make the allegation in order to support the jurisdiction of the court. Otherwise it is difficult to understand why the allegation was made.

Finally, we refer the Court to the opinion which was filed in the case below (96 Fed. 865), as affording as clear and as comprehensive a discussion of the law bearing upon the case as can be submitted, and as fully supporting the view that the interests of the complainants are distinct and separate, and not of that class which permits them to be aggregated in the determination of the question of jurisdiction.

For the reason that the court below correctly understood and properly applied the law, and that its action in dismissing the bill for want of jurisdiction was right and proper, we respectfully submit that its decree should be affirmed.

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